



## THE CORPS' VEGETATION REMOVAL POLICY: JEOPARDIZING NATIONAL PUBLIC SAFETY

The Corps of Engineers (Corps) is a critical partner with the California Department of Water Resources (DWR) and local flood protection providers in protecting public safety. We cannot accomplish our FloodSAFE vision of improving integrated flood management without their active support, and we are pleased to have strong working relationships with our colleagues at the Corps in their district and division offices. Unfortunately the new Corps vegetation policy is counterproductive. The Corps' new approach to managing vegetation impairs our collective ability to improve public safety by diverting significant funds from more important repairs and improvements, increases the likelihood of erosion in some areas, is already delaying important repairs and improvements, and is already costing California millions of dollars. Furthermore, if implemented as currently written, the new vegetation management policy would be devastating to the environment, especially to salmon, steelhead and other species listed under the State and federal Endangered Species Acts. Although much of the focus has been on the Central Valley of California--the highest flood risk area in the United States before Hurricane Katrina--this policy also has significant adverse consequences outside the Central Valley.

### Key problems with the Corps' new vegetation management on levees proposal:

- The proposal fails to distinguish between legacy levees and new levees. This distinction is germane to understanding and addressing levee reliability.
- The extremely high costs of levee construction and mitigation required under the new proposal (estimated to be approximately 7 billion dollars) will divert limited resources from the remediation of critical risk factors with little or no improvement in public safety.
- The Corps' has not demonstrated that their new policy of widespread, costly vegetation removal will provide any tangible benefits to public safety.
- Whereas overtopping, underseepage, through-seepage, erosion and other modes of failure are well-documented and understood in the Central Valley, DWR has not seen evidence that well-managed vegetation poses significant risks in the Central Valley.
- Existing vegetation that currently provides erosion protection and soil reinforcement on many levees would be eliminated, increasing the risk of water-side scour and slope failures.
- The proposed vegetation policy would have devastating environmental impacts.
- The Corps is legally obligated to initiate preparation of an environmental impact statement under the National Environmental Policy Act (NEPA) and consultation under the Endangered Species Act (ESA), but has not done so. In separate actions, the Center for Biological Diversity and the Muckleshoot Tribe in Washington State have notified the Corps of their intention to litigate the ESA issues.
- By unfairly shifting the burden of implementation, including environmental compliance, to State and local agencies the new policy fails to reconcile the Corps' long history of policies and practices that have contributed to, or directly created, current conditions of the levees.
- The proposed requirements in the vegetation variance process are so stringent and ambiguous that variances are unlikely to be issued except under rare, specialized, local circumstances.
- The Corps has little or no scientific information to support the position they are taking – the Corps should allow ongoing scientific research to inform its regulatory process before proceeding.

**DWR's Proposed Solution.** The Corps should cease implementation of its new policy and instead collaborate with DWR and other agencies on a practical, system-wide, regional variance that is consistent with the *Central Valley Flood System Improvement Framework*, with the following key features:

- Establish regional framework agreements that address vegetation management within the context of the several unique settings in California.

- Prioritize vegetation management with respect to all risk factors. Corps vegetation policy should not inhibit or delay the remediation of higher priority risk factors.
- Provide clear guidance on the level of detail needed for a variance, how that detail will be evaluated, and an appeal procedure should the Corps and the local sponsor disagree on the outcome of the process.
- Initiate consultation under the Endangered Species Act and complete a genuine NEPA analysis.

**Background and Timeline.** For decades, DWR and the Corps have managed California levee systems in a way that has allowed vegetation to remain on levees for habitat, erosion protection and other purposes. Recently the Corps has initiated a significant policy change that would require most of this vegetation to be removed. Key milestones in the timeline of this controversy include:

- ❖ 1955 – The Corps’ standard operations and maintenance manuals for the Sacramento and San Joaquin Rivers were revised to allow “brush and small trees” on the waterside slope of levees where desirable – these provisions remained in effect for the next five decades, during which no failures of project levees were attributed to the presence of vegetation.
- ❖ 1958 – California accepted responsibility from the Corps for the Sacramento River Flood Control System – substantial numbers of mature trees and other vegetation were present at that time.
- ❖ 1996 – The Water Resources Development Act (Section 202(g)) directed a review of the Corps’ vegetation management guidelines to “address regional variations in levee management and resource needs . . . .”
- ❖ 2000 - 2001 – USFWS and NOAA Fisheries proposed to adopt “jeopardy opinions” if the Corps failed to provide for additional vegetation on levees. The Corps softened its approach to levee design and construction in order to avoid those jeopardy opinions.
- ❖ 2005 – Multiple levee failures occurred in Louisiana during Hurricanes Katrina and Rita.
- ❖ 2006 -- The Sacramento River Bank Protection Interagency Working Group established a collaborative process among DWR, U.S. Fish and Wildlife Service, NOAA Fisheries, California Department of Fish and Game, the Corps, and others. Subsequent levee repairs have included substantial amounts of vegetation for habitat purposes.
- ❖ 2007 – The Corps signaled through a “White Paper,” and through other communications, that it intended to require substantial vegetation removal, ostensibly in response to the Katrina disaster (despite the fact that vegetation did not cause any levee failures, as determined by the Corps-commissioned *Interagency Performance Evaluation Taskforce*).
- ❖ 2007 – The “California Levees Roundtable” (a collaborative process that included the Corps), was established, ultimately leading in 2009 to the *California Central Valley Flood System Improvement Framework* committing the Corps to ongoing collaboration.
- ❖ 2009 – The Corps, in ETL 1110-2-571 (ETL) adopted stringent vegetation guidelines applicable nationwide (including California), significantly expanding the requirements for vegetation removal.
- ❖ 2010 – The Corps proposed new restrictions to its vegetation variance process (VVP) that would employ a piece-meal approach and sharply restrict the vegetation on levees and create substantial new burdens for maintaining agencies. Together, the ETL and VVP would require:
  - Removal of vegetation without any potential for a variance on the upper third of the river-side slope, the crown, and the land-side slope of all Central Valley levees. In the absence of a variance, removal of all vegetation over 2” in diameter on the remainder of the system would be required.
  - A cumbersome, expensive, site-by-site variance process, with no option for a regional, system-wide solution.

An overwhelming number of comments critical of the VVP are submitted following the Corps’ February 9, 2010 request for public comments. Throughout 2010 and early 2011, public agencies and members of Congress write letters urging the Corps to reconsider finalization of the VVP as proposed. The California Levees Roundtable is re-chartered primarily to better address implementation issues and conflicts with Corps policies.

- ❖ 2011 – The Corps announced that the PGL would be finalized following a second 30-day public review period that is currently scheduled for summer 2011.